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IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 1970

No. 1206

WILLIAM MINOR PATRUM, JR., - - Petitioner,

versus

CITY OF GREENSBURG, KENTUCKY, - Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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CITY OF GREENSBURG, KENTUCKY, - *Respondent.*

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

TO THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

May it please the Court:

RESTATEMENT OF THE CASE.

In its action against police officer William Martin, Mayor George Huddleston and the City of Greensburg, Kentucky, the plaintiff sought to invoke jurisdiction by the Federal Courts under Title 28 U.S.C.A. Section 1343(3), 42 U.S.C. 1983 and 1985 and under the theory of "pendent jurisdiction." The United States District Court for the Western District of Kentucky dismissed the complaint as to the City and Mayor and declined to invoke "pendent jurisdiction."

The plaintiff appealed the dismissal of the City, and the U. S. Court of Appeals for the Sixth Circuit affirmed.

It is erroneous to say that the Court refused to hear "the state claim" since the police officer is still before the District Court.

RESPONSE TO PETITIONER'S POINT I.

The Supreme Court of the United States in the case of *Monroe* v. *Pape,* 365 U. S. 167, 5 L. Ed. 2d 492, 81 S. Ct. 473, after exhaustive research, and as evidenced by its opinion therein, has ascertained the Legislative intent and purpose of 42 U.S.C.A. Section 1983 and has determined that a municipality is not a person within the meaning thereof and that Federal Jurisdiction of a municipality is not obtained thereunder or under 28 U.S.C.A. Section 1343. This holding was followed in *Egan* v. *City of Aurora,* 365 U. S. 514, 5 L. Ed. 2d 741, 81 S. Ct. 684.

It is noted that in the brief of counsel for petitioners in *Monroe* v. *Pape* that argument was made and the Court in that case did, in fact, in making its decision consider the "Rule of Respondeat Superior" and state laws pertaining to municipal immunity (5 L. Ed. 2d, pages 1052 and 1053).

In the case of *Wojtas* v. *Village of Niles,* 334 F. 2d 797 (7th Cir. 1964), cert. denied, 379 U. S. 964 (1965), the United States Court of Appeals for the Seventh Circuit held that the incorporation of three counts against the municipality based on Illinois law in a

complaint based entirely upon alleged violations of a Federal Statute (42 U.S.C.A. Sections 1983, 1985 and 1986) and Fourteenth Amendment to the Constitution of the United States, does not give the District Court jurisdiction of those three counts.

In each of the cases of *Kahn* v. *Garanzini,* 411 F. 2d 210 (CA 6, 1969); *Puett* v. *City of Detroit,* 323 F. 2d 591 (CA 6, 1963); and *Fisher* v. *New York,* 312 F. 2d 890 (CA 2, 1963), the Courts of Appeals affirmed dismissal of the respective municipalities for lack of jurisdiction under the Civil Rights Act aforesaid, the *Kahn* and *Fisher* cases citing *Monroe* v. *Pape* as authority.

There is no Federal question involved which has heretofore been determined by this Court herein.

RESPONSE TO PETITIONER'S POINT II.

The United States Court of Appeals for the Sixth Circuit in its decision herein has quite appropriately summarized the Court's holding in regard to "pendent jurisdiction" as set forth in *United Mine Workers* v. *Gibbs,* 383 U. S. 715, 16 L. Ed. 2d 218, 86 S. Ct. 1130, and as applied to the case herein on appeal.

In the cases cited by petitioner of *Ritchie* v. *United Mine Workers,* 410 F. 2d 827 (CA 6, 1969); *Riverside Coal Co., Inc.* v. *U. M. W.,* 410 F. 2d 267 (CA 6, 1969); *Gibbs* v. *United Mine Workers,* 343 F. 2d 609 (CA 6, 1965); *McArthur* v. *Pennington,* 253 F. Supp. 420 (ED. Tenn.); *Sauls* v. *Hutto,* 304 F. Supp. 124 (ED. La.); and *Roberts* v. *Williams,* 302 F. Supp. 972

(N.D. Miss.), no municipality was involved. There was both a Federal and State claim asserted against each defendant and the District Court in each instance exercised its discretion in the joining of the Federal and State claims based upon the theory of "pendent jurisdiction" and not in conflict with the decision and guide lines laid down in *United Mine Workers* v. *Gibbs, supra.*

Contrary to the statement of the petitioner that in the case of *McArthur* v. *Pennington,* 253 F. Supp. 420, the Federal Court exercised its jurisdiction to adjudicate the common law claim against a municipal corporation of Tennessee, a reading of the opinion of the Court reveals the following:

> "The City of Loudon contends that it cannot be held as a matter of law for the alleged violation of plaintiffs' rights. This phase of the case may be disposed of in short order. The City is right in this contention. It is not liable under the Civil Rights Statute. Monroe v. Pape, 365 U. S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492; Sires v. W. R. Cole, et al. (C.A. 10, July 17, 1963), 320 F. 2d 877."

It would appear that the petitioner would have the Court overrule and reverse its holding relative to the theory of "pendent jurisdiction" in *United Mine Workers* v *Gibbs, supra,* so as to make the exercise of "pendent jurisdiction" mandatory.

The Court has held in *Monroe* v. *Pape, supra,* that the Federal Courts do not have jurisdiction of a municipality under the Civil Rights Act, *supra,* and it is submitted that "pendent jurisdiction" cannot be

utilized to obtain jurisdiction wherein the Court has held that Congress has not granted same.

There is no Federal question herein which has not been heretofore determined by this Court.

CONCLUSION.

The Court should deny certiorari.

Respectfully submitted,

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PROOF OF SERVICE.

For respondent, Robert L. Simmons, of counsel, a member of the Bar of the United States Supreme Court, states that on the 9th day of March, 1970, he served the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari upon all parties required to be served by mailing a copy in the United States Mail, postage prepaid, to the petitioner's counsel of record, to-wit: Theodore Wurmser, Gary L. Gardner, Eubanks, Gardner & Schaefer, 999 Portland Federal Building, 200 West Broadway, Louisville, Kentucky 40202. This certificate of service is made pursuant to Rule 33 of the Rules of the Supreme Court of the United States.

Robert D. Simmons

ROBERT D. SIMMONS,
Of Counsel for the Respondent.